IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 147/2005

The New India Assurance Company Limited,
Branch Office Karolbagh, New Delhi
Through its Divisional Manager,
Haldwani (Nainital) ….Appellant.

Versus

1- Abdul Kalam S/o Late Mohd. Hasmuddin
2- Smt. Alisha Khatoon W/o Abdul Kalam
R/o Village Japura Khurd
Tehsil and Thana Kashipur
District Udham Singh Nagar
3- Sushil Kumar S/o R.C. Kumar
R/o J-93, Ashok Vihar
New Delhi -- Respondents.

AND

A.O. No. 148/2005

The New India Assurance Company Limited,
Branch Office Karolbagh, New Delhi
Through its Divisional Manager,
Haldwani (Nainital) ….Appellant.

Versus

1- Smt. Rampyari W/o Late Sardar Singh,
2- Ram Singh S/o Late Sardar Singh,
3- Km. Santosh D/o late Sardar Singh
4- Ranveer Singh S/o Late Sardar Singh (minor)
Through his guardian and mother Smt.
Rampyari R/o Subhash Nagar, Avas Vikas Thana &
Tehsil Kashipur, District U.S. Nagar … Respondents.

Sri R.B. Aggarwal, Advocate for the appellant.
Sri B.S. Parihar, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal,J.

Dated: 16th June, 2006.

Both these appeals arise out of the same accident and similar controversy on facts and law is involved, therefore, both the appeals were heard together and are being decided by the common judgment.

2- Appeal No. 147/2005, has been filed against the judgment and award dated 7-2-2005, passed by M.A.C.T./Addl. District Judge, U.S. Nagar, in MACP No. 26/2004 Abdul Kalam and another Vs. Sushil Kumar and another, whereby the claimants

were awarded compensation of Rs. 3,62,000/- along with interest @ 6% per annum from 20-7-2004 till the final payment payable by New India Assurance Company. Whereas appeal No. 148/2005, has been filed against the judgment and award dated 7-2-2005, passed by M.A.C.T./Addl. District Judge, U.S. Nagar, in MACP No. 221/2003 Smt. Ram Pyari and others Vs. Sushil Kumar and another, whereby the claimants were awarded compensation of Rs. 2,73,000/- along with interest @ 6% per annum from 5-4-2004 till the final payment payable by New India Assurance Company.

3- Briefly stated the facts of the case are that deceased Sardar Singh and Shafikul Rahman were engaged in doing the work of construction of motor road on Kasana Road in front of L.G. Factory. On 26-5-2001 at about 8-45 A.M. when the deceased were doing construction work, suddenly Bus No. D.L. –1 P.A./3298 came there from Surajpur side at a high speed overtaking another bus hit the deceased due to which Sardar Singh and Safikul Rahman sustained grievous injuries. Both the injured persons were brought to the hospital but during treatment they succumbed to the injuries.

4- The claimants of appeal No. 147/2005 who are the parents of deceased Safukul filed claim petition for award of compensation of Rs. 15,00,000/-. They have asserted that deceased Safikul Rahman at the time of accident was 22 years of age and was doing the work of mason with the contractor and was getting Rs. 110/- per day and his monthly income was Rs. 3,300/-.

5- The claimants of appeal No. 148/2005, who are widow and children of deceased Sardar Singh, have filed the claim petition for compensation of Rs. 5,00,000/-. The claimants have alleged that deceased Sardar Singh at the time of accident was 44 years of age and was earning Rs. 3300/- per month from the work of mason.

6- The owner of the offending bus No. D.L. 1-P.A./3298 filed his W.S. in both the claim petitions and alleged that his bus did not involve in the accident. The offending bus was possessing valid registration, insurance and its driver had also valid driving licence.

7- The New India Assurance Company contested both the claim petitions and filed its W.S. stating therein that the claimants neither mentioned the policy number nor filed copy of insurance policy. It was also alleged that the claimants did not file cogent evidence regarding the income of the deceased persons. The claimants also did not file copy of F.I.R., charge sheet, site plan, P.M. Report and D.L. with the claim petitions. It was also alleged that the rash and negligence of the bus driver should be strictly proved by the claimants.

8- The Tribunal on the basis of pleadings of parties framed relevant issues in both the claim petitions. Parties adduced evidence in support of their claim. The Tribunal on assessment of evidence on record allowed both the claim petitions and awarded Rs. 3,62,000/- as compensation along with interest @ 6% per annum from 20-7-2004 in respect of death of Safikul Rahman and Rs. 2,73,000/- along with interest @ 6% per annum from 5.4.2004 with regard to the death of deceased Sardar Singh. In both the claim petitions the amount of compensation was directed to be paid by the New India Assurance Company.

9- Feeling aggrieved by the impugned judgment and awards the insurer, i.e. New India Assurance Company has preferred these appeals before this Court on the ground that F.I.R. of the accident was lodged against unknown driver and the Tribunal has erred in concluding that the bus No. DL. 1PA-3298 was involved in the accident. It was also alleged that the matter was investigated by an independent investigator of the appellant to find out the facts of the case and he has found that the accident was not the result of the driving of the driver of vehicle No. DL-1PA-3298. It was also alleged that the police of P.S. Surajpur, District Gautam Budh Nagar after investigation submitted final report in the crime as it could not be found that the accident was the result of driving of the vehicle No. D1-1PA-3298. It was also alleged that the claimants could not prove the income of the deceased persons hence the compensation should have been assessed on the national income.

10- We have heard the learned counsel for the parties and perused the record.

11- The record reveals that although the appeal has filed application U/S 170 of the Motor Vehicles Act before the court below and the application was allowed by the Tribunal but simply by allowing the application U/S 170 of the Motor Vehicles Act the appellant cannot agitate the points with regard to the factum of accident as well as the rash and negligence unless the appellant has adduced any evidence in this regard before the court below. The only ground available to the appellant to agitate the appeal is on the point of quantum of compensation.

12- However, the evidence on the record reveals that the offending bus in question was being driven rashly and negligently with the result it hit the masons working on the road who succumbed to their injuries. Two persons were hit by the offending bus in question namely Sardar Singh and Safikul Rahman and they sustained grievous injuries in the accident with the result they subsequently died. P.W.2 Ram Singh is the eye-witness and he has lodged the F.I.R. at the Police Station and he has also stated in his deposition that the offending bus in question was being driven rashly and negligently and on account of the same it crushed two masons namely Sardar Singh and Safikul Rahman who were working on the road. The factum that the police submitted the final report in case crime No. 41/2001 does not lead to an inference that the claimants in this case have not been able to establish the factum with regard to the rash and negligent driving of the offending bus by its driver. The prompt F.I.R. as well as the post mortem reports of the deceased clearly suggest that on the date and the alleged time as well as at the place the accident took place and the offending bus in question, hit Sardar Singh and Safikul Rahman. The appellants before the Tribunal have not adduced any evidence in order to support this aspect that the accident did not take place by the offending bus in question. The driver of the offending bus has neither been produced by the owner of the vehicle nor by the insurer who is the appellant before this court.

13- It is pertinent to mention here that the insurer has produced Chandra Pal Singh Tomar as D.W.1 who is the Investigator of the Insurance Company and he has submitted the report that on the

basis of the eye witnesses present at the site the accident took place by some unknown vehicle but the Insurance Company did not produce those eye witnesses who have deposed before the Investigator that the accident took place by an unknown bus. Therefore, the Tribunal has rightly assessed that the offending bus in question was being driven rashly and negligently by its driver and on account of the same it hit Sardar Singh and Safikul Rahman who ultimately succumbed to their injuries.

14- As far as the quantum of compensation is concerned, the Tribunal has rightly assessed that the monthly income of deceased Sardar Singh would be Rs. 3000/-. This deceased was working as a mason with the road construction contractor and was getting Rs. 110/- per day. Although no documentary evidence has been adduced by the claimants in support of the monthly income of the deceased but it is a matter of common knowledge that in any case an ordinary labour gets at least Rs. 70/- per day from his work but as in the instant case the deceased was working as mason therefore his earning must be much more than an ordinary labour. The Tribunal has thus rightly assessed that the deceased must be earning at least Rs. 3000/- per month. In case if 1/3rd amount is deducted from the monthly income of the deceased against his personal expenses then the financial dependency of deceased Sardar Singh comes to Rs. 2000/- per month and thus the annual dependency comes to Rs. 24,000/-.

15- The age of the deceased, as has been mentioned in the claim petition, is 44 years. The claimant in her deposition before the court has also stated that the deceased was aged about 44 years at the time of accident, but the post mortem report which has been filed before the Tribunal by the claimants indicates that the deceased was 55 years of age at the time of the accident. Therefore, the Tribunal has rightly assessed the age of the deceased as 55 years. Thus keeping in view the age of the deceased as well as the monthly income a multiplier of 11 would be just and proper and the Tribunal has not erred in any manner in applying the multiplier of 11 in the instant case. The total amount of compensation comes to Rs. 2,64,000/-. The Tribunal has also awarded an amount of Rs. 2000/-

for funeral expenses and Rs. 5000/- for loss of love and affection. We are not inclined to interfere in the finding recorded by the Tribunal in awarding the aforesaid amount of compensation in favour of the claimants. The Tribunal has also rightly awarded the rate of interest and the same does not require any interfere by this court. We therefore come to the conclusion that the appeal No. 148/2005 lacks merit and is liable to be dismissed.

16- As far as the quantum of compensation in appeal No. 147/2005 is concerned the age of the deceased Safikul Rahman was 22 years at the time of the accident. The post mortem report also indicates that the age of the deceased was 22 years Therefore, the Tribunal has rightly held that the age of the deceased was 22 years at the time of accident. The deceased was working as a mason with the road construction contractor and must be getting Rs. 3000/- per month from his employer. As we have already indicated while deciding the another appeal arising out of the same accident that an ordinary labour earns about Rs. 70/- per day as labour charges hence the deceased in the instant case who was working as a Raj Mistri (mason) must be certainly earning more than an ordinary labour. Therefore, the Tribunal has rightly assessed that the monthly income of the deceased must be Rs. 3000/- per month. In case if 1/3rd amount against the person expenses of the deceased is deducted out of this amount, then the monthly financial dependency of the claimants come to Rs. 2000/- and Rs. 24,000/- per annum.

17- The deceased was unmarried at the time of the accident, therefore, the amount of compensation would be calculated on the basis of the age of the claimants who are the parents of the deceased. The claimant No.1 who is the father of the deceased, is age about 44 years, while claimant No.2, who is the mother of the deceased, is aged 43 years, therefore, in view of the income of the deceased as well as the age of the claimants who were dependents on the deceased, would be taken into consideration and in view of the age of the claimants the multiplier of 15 would be applicable. The Tribunal has also rightly adopted the multiplier of 15 in the instant case and we are not inclined to interfere in the same. After

adopting the multiplier of 15 the total amount of compensation comes to Rs. 3,60,000/-. The Tribunal has also awarded an amount of Rs. 2000/- under the head of funeral of the deceased. Therefore the amount of Rs. 3,62,000/-, as has been awarded by the Tribunal, appears to be quite adequate and proper. As far as the rate of interest awarded by the Tribunal is concerned, the same does not require any interference by this Court.

18- We therefore come to the conclusion that this appeal No. 147/2005 also lacks merit and is liable to be dismissed.

19- According both the appeal Nos. 147/2005 and 148/2005 are dismissed. The impugned judgment and awards dated 7-2-2005 passed by the MACT/Addl. District Judge, U.S. Nagar are hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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